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REMARKS

Reconsideration of this application, as amended, is respectfully requested.

Initially, Applicants would like to thank the Examiner for maintaining the indication of allowability as to claims 4, 15, 19, 21-29, 37, 39, 40 and 41.

In the previous response, claims 1 and 38 were amended to recite that "the first insertion instrument is adapted to be bent in the space to a side opposite to the living-body tissue that is the object of treatment." In the most recent Official Action, the Examiner maintains the rejections of the claims from the previous Official Action. Specifically, the Examiner rejects claims 1, 6, 8-14, 17-18, 35 and 38 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,119,913 to Adams et al., (hereinafter "Adams").

In response, Applicants respectfully traverse the Examiner's rejection under 35 U.S.C. § 102(b) for at least the reasons set forth below. However, independent claims 1 and 38 have been amended to clarify their distinguishing features.

In paragraph [04] of the Official Action, the Examiner argues that Adams discloses a space and that the first insertion instrument (endoscope 16) is adapted to be bent into the space to a side opposite to the living tissue. In paragraph [05], the Examiner further argues that "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. Lastly, in paragraph [09], the Examiner concludes that "the articulated endoscope disclosed by Adams is capable of the descriptive usage recited in claims 1 & 38."

Applicants respectfully disagree. Although the endoscope disclosed in Adams can be articulated in the direction of the space, the threaded post (352) (see Figures 9 and 9A) prevents it from doing so. Therefore, the device of Adams is not capable of the recited function of claims 1 and 38.

However, in the interests of advancing prosecution, independent claims 1 and 38 have been amended to recite:

"wherein the second insertion instrument is configured such that the first insertion instrument can be bent in the space to a side opposite to the living tissue that is the object of treatment."

Thus, claims 1 and 38 have been amended to positively recite a structural configuration of the second insertion instrument. The second insertion instrument of Adams is not so configured because the threaded post (352) prevents the first insertion instrument (endoscope 16) from being bent in the space opposite the living tissue.

Therefore, with regard to the Examiner's arguments in paragraphs [04], [05] and [09] of the Official Action, Applicants respectfully submit that the articulated endoscope disclosed by Adams is NOT capable of the descriptive usage recited in claims 1 & 38.

The amendment to claims 1 and 38 is fully supported in the original disclosure. Thus, no new matter has been entered into the disclosure by way of the present amendment to claims 1 and 38.

Thus, an endoscopic treatment system having the features discussed above and as recited in independent claims 1 and 38 is nowhere disclosed in Adams. Since it has been decided that "anticipation requires the presence in a single prior art reference, disclosure of each and every element of the claimed invention, arranged as in the claim,"¹ independent claims 1 and 38 are not anticipated by Adams. Accordingly, independent claims 1 and 38 patentably distinguish over Adams and are allowable. Claims 6, 8-14, 17-19 and 35 being dependent upon claim 1, are thus at least allowable therewith. Consequently, the Examiner is

¹ Lindeman Maschinenfabrik GMBH v. American Hoist and Derrick Company, 730 F.2d 1452, 1458; 221 U.S.P.Q. 481, 485 (Fed. Cir., 1984).

respectfully requested to withdraw the rejection of claims 1, 6, 8-14, 17-19, 35 and 38 under 35 U.S.C. § 102(b).

In view of the above, it is respectfully submitted that this application is in condition for allowance. Accordingly, it is respectfully requested that this application be allowed and a Notice of Allowance issued. If the Examiner believes that a telephone conference with Applicant's attorneys would be advantageous to the disposition of this case, the Examiner is requested to telephone the undersigned.

Respectfully submitted,



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